

SERVICE DATE – NOVEMBER 30, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1239 (Sub-No. 2X)

CITY OF TACOMA, DEPARTMENT OF PUBLIC UTILITIES, BELTLINE DIVISION—
DISCONTINUANCE OF SERVICE EXEMPTION—IN THURSTON COUNTY, WASH.

Digest:¹ This decision permits the City of Tacoma, Department of Public Utilities, Beltline Division, to discontinue rail service over two segments of railroad in Thurston County, Wash., subject to standard employee protective conditions.

Decided: November 28, 2016

By petition filed on August 15, 2016, the City of Tacoma (the City) seeks an exemption under 49 U.S.C. § 10502 from the prior approval requirements of 49 U.S.C. § 10903 to discontinue service over approximately 10.2 miles of rail lines consisting of the following two segments (the Lines): (1) from milepost 3.72Q at Quadlok to milepost 0.0Q at St. Clair in Thurston County, Wash., (the Quadlok-St. Clair line) and (2) from milepost 16.0B at Belmore to milepost 9.07B at Olympia in Thurston County, Wash. (the Belmore-Olympia line). The Lines are owned by BNSF Railway Company (BNSF). Notice of the exemption proceeding was served and published in the Federal Register on September 2, 2016 (81 Fed. Reg. 60,771). No comments concerning the proposed discontinuance were filed. The Board will grant the exemption from 49 U.S.C. § 10903, subject to standard employee protective conditions.

BACKGROUND

In 2004, the City obtained authority from the Board to operate over the Lines pursuant to a lease with BNSF. See City of Tacoma, Dep't of Pub. Utils., Beltline Div.—Acquis. & Operation Exemption—Lakeview Subdiv., Quadlok-St. Clair & Belmore-Olympia Rail Lines in Pierce & Thurston Ctys., Wash., FD 34555 (STB served Oct. 19, 2004). The City states that its lease with BNSF expired on March 16, 2016, and that common carrier freight service obligations under the expired lease reverted back to BNSF. According to the City, BNSF entered into a lease with a new operator to provide service over portions of the Lines.²

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² On February 26, 2016, the Board published two related notices of exemption, wherein Genesee & Wyoming Inc. sought authority to continue in control of Olympia & Belmore
(continued . . .)

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. § 10903, a rail carrier may not discontinue operations without the prior approval of the Board. Under 49 U.S.C. § 10502, however, the Board must exempt a transaction or service from regulation when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny of the City's proposed discontinuance under 49 U.S.C. § 10903 is not necessary to carry out the RTP in this case. The City states that freight rail service over the Lines has reverted back to BNSF, and therefore there will be no diversion of traffic from the Lines. The City further states that granting the exemption would expedite the City's ability to discontinue rail service over the Lines. Thus, an exemption from the application process would minimize administrative expenses, reduce regulatory barriers to exit, and result in the efficient handling of this proceeding. 49 U.S.C. §§ 10101(2), (7), & (15). Other aspects of the RTP would not be adversely affected by the exemption.

We also find that regulation under 49 U.S.C. § 10903 is not necessary to protect shippers from the abuse of market power. The City's operating lease with BNSF has expired, and common carrier freight service obligations reverted back to BNSF. Additionally, BNSF has entered into a lease with a new operator to provide service over portions of the Lines. To the extent that the new operating lease only covers portions of the Lines, BNSF retains the common carrier obligation for the remaining portions. Thus, no active rail customer will lose access to rail freight service as a result of this discontinuance.³

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose on the City the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

(. . . continued)

Railroad, Inc. (OBRR), and wherein OBRR sought to lease from BNSF approximately 13 miles of rail line. See Olympia & Belmore R.R.—Lease & Operation Exemption Including Interchange Commitment—BNSF Ry., FD 35999 (STB served Feb. 26, 2016); Genesee & Wyo., Inc.—Continuance in Control Exemption—Olympia & Belmore, R.R., FD 36000 (STB served Feb. 26, 2016).

³ Because we find that regulation of the proposed discontinuance is not necessary to protect shippers from the abuse of market power, we need not determine whether the proposed discontinuance is limited in scope.

Because this is a discontinuance of service and not an abandonment, the Board need not consider offers of financial assistance (OFAs) under 49 U.S.C. § 10904 to acquire the Lines for continued rail service, trail use requests under 16 U.S.C. § 1247(d), or requests to negotiate for public use of the Lines under 49 U.S.C. § 10905. However, the OFA provisions under 49 U.S.C. § 10904 for a subsidy to provide continued rail service do apply to discontinuances.

Because there would be environmental review during any subsequent proceeding for authority to abandon, discontinuance proceedings do not require an environmental review.

It is ordered:

1. Under 49 U.S.C. § 10502, the Board exempts from the prior approval requirements of 49 U.S.C. § 10903 the discontinuance of operations by the City over the above-described segments of rail line, subject to the employee protective conditions set forth in Oregon Short Line.

2. An OFA under 49 C.F.R. § 1152.27(b)(2) to subsidize continued rail service must be received by the City and the Board by December 9, 2016, subject to time extensions authorized under 49 C.F.R. § 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(1).⁴ Each OFA must be accompanied by the filing fee, which currently is set at \$1,700. See Regulations Governing Fees for Servs. Performed in Connection with Licensing & Related Servs.—2016 Update, EP 542 (Sub-No. 24) (STB served Aug. 2, 2016).

3. OFAs for subsidy and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: “**Office of Proceedings, AB-OFA.**”

4. Petitions to stay must be filed by December 12, 2016. Petitions to reopen must be filed by December 20, 2016.

5. Provided no OFA to subsidize continued rail service has been received, this exemption will be effective on December 30, 2016.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

⁴ Consistent with our precedent, any person seeking to file an OFA must provide evidence that there is some shipper that would make use of common carrier service. See, e.g., CSX Transp., Inc.—Aban. Exemption—in Wash. Cty., Md., AB 55 (Sub-No. 727X) (STB served Oct. 24, 2013); Union Pac. R.R.—Aban. Exemption—in Pottawattamie Cty., Iowa, AB 33 (Sub-No. 300X) (STB served Jan. 20, 2012).